

Garnett Planning Commission Meeting
Minutes
August 15, 2017
Garnett City Hall

The meeting of the Garnett Planning Commission was called to order on August 15, 2017, by Chairperson Beth Mersman at 6:00 p.m. with the following members present: Beth Mersman, Chairperson; Skip Landis, Mike Norman and Burt Peterson. Adam Caylor was also present, arriving after the call to order at 6:03 p.m. Absent: Matt Jones and Les Thomas. Others in attendance were Gary Giczewski, Zoning Administrator and Susan Wettstein, Administrative Assistant.

APPROVAL OF MINUTES

A motion was made by Mike Norman to approve the May 16, 2017 minutes as written. Burt Peterson seconded the motion. Those in favor: 4. Opposed: 0. Motion passed unanimously.

PUBLIC HEARINGS

None.

OLD BUSINESS

None.

NEW BUSINESS

Chairperson Beth Mersman opened the review and comment session on Ordinance No. 4003 by asking Gary Giczewski, Zoning Administrator to speak. Gary brought before the Commission a request by Dane Hicks, President of Garnett Publishing, Inc., to consider repealing the city regulation that prohibits residential housing on the first floor of commercial structures. A copy of Mr. Hicks' request was provided to the Planning Commission prior to this meeting and is attached hereto and made a part of these minutes.

Gary also provided a copy of City Ordinance No. 4003 that refers to single and two family residential uses under certain specified conditions of structures in B-1, B-2 and I-1 districts. He noted that this ordinance has been changed a time or two, reference to Ordinance No. 4003 amending Ordinance No. 3059; repealing Ordinance No. 3822.

Gary reiterated Mr. Hicks' comments per a conversation he had and subsequent email asking for this board to consider allowing businesses around the immediate square to be used for residential purposes.

In addition, Gary shared with the Commission an ordinance from the City of Lindsborg, Ordinance No. 4696. This was provided by Administrative Assistant, Susan Wettstein, who requested information from other cities through an affiliation. This ordinance allows fifty-percent of the first floor residential use by special use permit. Gary spoke that he is of the mind that he agrees a portion of the first floor could be used for residential as long as it is the back half. He feels the front should remain commercial, as this ordinance reads.

Adam Caylor entered the meeting at 6:03 p.m.

Burt Peterson: Has anyone has ever been to Lindsborg? I just got through spending a half of a year there building a new structure for a pharmacy. Their downtown and our downtown are not the same; not even in the same league or planet. They have original brick streets that you can set a level and a square by. It is absolutely phenomenal.

Skip Landis: Was the new structure built downtown?

Burt Peterson: No, on the highway.

Gary stated that this ordinance is simply an example of what could be done.

Gary pointed to Garnett's current Ordinance No. 4003 saying that unless you are the actual owner of the building, or co-owner, that is the only legal way to have a residence inside a commercial building on the first floor. So Mr. Hicks has asked the Planning Commission to revisit our current ordinance and possibly make revisions to it.

City Attorney Terry Solander was unable to attend this meeting but his memo providing comments to Mr. Hicks' request was introduced at the meeting. A copy is attached to these minutes.

Mike Norman: Not many years ago, we allowed a person to live in the front of a building where Don Millington's shop is now (Address), when it was a video store on one side and an apartment on the other.

Burt Peterson: As someone who has spent a significant amount of time as a developer, when you roll into a town with an idea and you are met with nothing but zoning obstacles you move on to the next town. I spoke to Dane about this some time ago. He actually brought it up while I was telling him about working on a project that was using a rural housing tax credit; a relatively new tax credit program called RHID (Rural Housing Incentive District), which is basically TIF (Tax Increment Financing) by another name. There is a map and our town is in it. Most small towns in Kansas are. There is an allocation of money that the state allows but the program has to be approved by the school board and all other taxing authorities within the district. You qualify for a TIF but it is under RHID guidelines and it allows you to do this for market grade rental properties. If you took every decaying building that is unoccupied in Garnett you would have a very nice project to propose to the State of Kansas. It is awarded every September. It is too late this year, plus we don't have a builder that is interested. Just estimating you could probably get 20 units in Garnett's downtown. Nice, market grade units. I have personally converted extremely large commercial use buildings into residential or mixed use. Everywhere I have been met by very large boards, city councils and state officials that look positively, especially whenever what is decaying and the taxes are not being paid, or the state of affairs of the structure is going downhill. I have zero objections to this. In fact, I have one-hundred percent support of this. Anyone who wants to live in one of these buildings has to put a lot of money into it to do so to meet regulations, right?

Gary Giczewski: Yes.

Burt Peterson: By the time somebody makes the investment they are going to have done what Eric (Brummel) has. What he has done to his building is a shining example of what can be done. Because these kinds of people will make the improvements and pay the taxes to keep the buildings standing. If we don't do something the buildings will come down. It wasn't all that long ago that Joyce (Martin) made a list of probable condemnation properties that you can't do much about.

Gary: What if an investor buys a building, doesn't really do anything and then says, "Okay, I need some renters." Cheapens the rent. They move in and then you have their laundry hanging in the front window and there is nothing you can do about it.

Burt Peterson: You can regulate how the building codes are.

Gary Giczewski: In order to do that would require rewriting an new ordinance.

Mike Norman: A similar situation happened with the Garnett Hotel where the Harris Park stands now. An investor bought the property and then moved out of state and eventually the City bore the cost to tear it down and clean it up.

Burt Peterson reiterated the amount of money that would be required to convert any of these retail buildings, which are quite large, into a residence would be significant.

Gary Giczewski: You are of the mindset that to allow the use of the total building; front and back, upstairs as residential, just so I understand?

Burt Peterson: I would not limit anything but I would simply pose upon them certain codes, such as facade; that no picture window that would allow inappropriate views...

Mike Norman: Wouldn't that be discriminatory?

Burt Peterson: Requiring tinted windows is required in many urban markets.

Skip Landis: I have seen the town square change from the time I lived here before to now, due to that many businesses have left. Times have changed and our population has become very mobile. I do not want the square to just deteriorate and that is what I feel it has started to do. The vacant areas such as between Patriots Bank and the next building become an eyesore. When the restaurant (Denise's) is taken down there is another empty spot. There needs to be an anchor tenant (example given). If we can attract and draw some life in there I think that is a positive and could put us back on the map. Burt talks about this opportunity and this money that is available. Seems like it could shore up some holes. In support of Dane's letter, where he talks about the viable businesses that are presently there now, these are not the types that are going to draw a lot of people off Highway 59 or 169. Being the county seat, however, some of these businesses will prevail in those areas. I do not see trashing the whole ordinance but making some amendments. I think the Lindsborg ordinance has some things we could work with and make it viable, which by special use permit could take care of issues and concerns. How fast someone may want to invest in these structures and how fast someone may want to move in could be five or six years out.

If you don't have the infrastructure in place in your policies then you make decisions quickly that might not be in the best interest of our future. In the neighborhood I grew up in people lived in the back or upstairs of their stores... I say let's take a look at the Lindsborg ordinance, and particularly the second "Whereas" in our ordinance.

Burt Peterson: Their (Lindsborg) ordinance pretty much mirrors ours, other than you can't rent it even if you built it, and you can live in the front half.

Mike Norman: I feel the theory behind the current ordinance was for fear the downtown would look like a low income apartment complex.

Burt Peterson: Even with that, I don't feel what we have in place right now is working.

Gary Giczewski: I am not against special use permits for this so that you have the opportunity to, not that you are going to be prejudiced against someone, but you do have the ability to know what their intended plan is.

Burt Peterson: We cannot support retail. That's the problem. The question is truly the front half and whether it can be rented? Those are really the only two reasons we would want to do this.

Skip Landis: And if there is enough traffic to support to support retail.

Burt Peterson: It can't or it would be here. Any opportunities we have for decent housing...

Adam Caylor: So what we are referring to would not only apply to existing buildings but also new construction?

Burt Peterson: Yes.

Miscellaneous discussion ensued on the various vacant lots.

Gary Giczewski: We also have two buildings on 6th Avenue that are now in condemnation.

Gary Giczewski: Joyce Martin used to be the Hearing Officer for this and now the new city manager has given me this duty.

Gary Giczewski: However you would like to pursue this, it appears there needs to be some amendments to the existing ordinance and a portion of the Lindsborg ordinance added? That would take Terry to prepare the ordinance according to what you would suggest to add or subtract.

Upon discussion what would be stricken or changed from the original ordinance and what would be added from the Lindsborg Ordinance No. 4696, a motion was made by Skip Landis that the Planning Commission take a look at Ordinance No. 4003 and amend parts of that ordinance to incorporate language that would be specific to residences on the first

floor of said businesses with use of a special permit, including rental. Additionally, the following changes:

1. The second "Whereas" paragraph is to be removed and replaced with paragraph (77) in City of Lindsborg Ordinance No. 4696;
2. SECTION 2: (B) of our Ordinance No. 4003 to be removed.

Burt Peterson second the motion.

Discussion: Beth asked, if upon passage of this motion, if Terry would make these changes and submit a draft by email and then this Commission would review the draft at the next meeting.

Gary Giczewski: Yes, and at the next meeting the Planning Commission would vote on whether the draft is accepted for passage. Is there anything else at this time this Commission would like to add? Now would be the time to make the change.

Mike Norman: How was the Lindsborg ordinance found?

Susan Wettstein: I have a list serve through the Administrative Assistants of Kansas Cities. I requested information related to this topic from other cities. The City of Lindsborg responded with this ordinance.

Susan Wettstein asked for clarification of the said motion and changes.

Burt Peterson: Strike Section 2 (B) of our ordinance. Add Section 77 from Lindsborg Ordinance 4696.

Skip Landis: In the second paragraph of our ordinance you can jump in at, "Whereas, said residential use of first floor (77)... In fact, you can strike the next paragraph and add A., B., C. and D., but instead of lettering each paragraph have them flow as subsequent paragraphs.

Susan Wettstein: But you do not want the part of paragraph A. in Lindsborg Ordinance No. 4696 where it says, "Residential use permitted up to but not exceeding 50% of the total ground floor space", correct?

Burt Peterson: No, just the (77). The rest of that is already in our ordinance. Skip and Mike agreed. In fact, our ordinance is more restrictive than theirs.

Susan Wettstein: So we will delete the second paragraph and replace is with paragraph (77).

Burt Peterson: We do need to keep the third paragraph of our ordinance because it speaks to different zoning districts.

Gary Giczewski: So Terry is going to ask if you are applying these changes to Ordinance No. 4003 to all zones; the B-1, the B02 and I-1? You are going to allow all of those zones to have the same?

Susan Wettstein: The highway, industrial areas and all?

Mike Norman: I see no reason to restrict them.

Burt Peterson: Yes. When you down-use any property in zoning you are submitting to paying taxes based upon the zoning class. If someone were to live in an I-1 zone you will pay taxes for an I-1 zone.

Skip Landis: I know in Terry's mind, he may be thinking on one page but in our mind, we are thinking what is going to happen in 10 or 15 years.

Gary Giczewski: So we are not going to restrict any of these other zones?

Skip Landis: He (Terry) may be saying what he has in his memo as a clarification because he feels he has to.

Susan Wettstein: You are allowing this in, say the I-1 Light Industrial areas, where Rickerson's is, or in the area behind the Garnett Inn that has not been developed yet, allowing for persons to purposely put in a metal building and make a residence out of it and live in it rather than the intended commercial zoned use?

Burt Peterson: If someone was going to do that and pay the taxes on it, why would you stop it? Because nobody has built on it yet.

Susan Wettstein: Well, I guess you are adding the special use permit element in which allows you to know what the intent is.

Skip Landis: Yes.

Burt Peterson: If someone were want to use the Rural Housing Tax Credit and go out into the industrial park and put in a 40-unit complex, why would we turn them down? You just added a lot to the tax rolls by doing it. Just because it is Light Industrial? I would hate to ruin an opportunity. They don't just fall in our lap, as we have found out.

Skip Landis: First of all, they have to come here with the idea.

Mike Norman: I don't know of anything that would scare us somewhere down the road in anyone of those zones. I can't think what that might be.

Burt Peterson: The only thing I could think of that would possibly scare us would be controlled rent government housing.

Susan Wettstein: Do you have the right to refuse that under the special use permit provision?

Burt and Skip: Yes.

Gary Giczewski: All you would do is look at these on a case by case basis.

Beth Mersman: We have a motion and a second on the floor. Is there any more discussion?

Skip Landis: I call for the question.

Voting recorded as follows: Those in favor: 5, Opposed: 0.

Beth Mersman: Terry will hopefully be at the next meeting?

Gary Giczewski: I will give him (Terry) what your changes are and what you want to adopt. I am sure he will come up with some sort of draft and we will revisit this next month. You can take a look at the draft and then vote on it, whether you will adopt it or if you need to amend it again.

Skip Landis: The City Commissioners will have to vote on it as well?

Gary Giczewski: Correct. What they (City Commission) vote is final. They approve the ordinances.

Beth Mersman: The next meeting will be September 19th at 6:00 p.m. Does Gary have anything else before we adjourn?

Gary Giczewski: I have nothing new to report as far as permits. A couple of businesses are changing. Genco is looking to put a headquarters out in the industrial park (East Second Avenue, off of Catalpa Street) and add on to the warehouse they already have there. They are also going to keep their property on North Highway 59. They will be moving their truck bed business into the industrial park on East Second Avenue with their headquarters, and continue steel fabrication for other companies at their highway location. The other change will be at 6th Avenue Boutique and Bronze. They are building a new metal building behind the current structure with plans to remove the current structure (house). This will allow them more room for their store and for more tanning beds.

Chairperson Beth Mersman adjourned the meeting at 6:47 p.m.

Minutes recorded by Susan Wettstein, Administrative Assistant.

As you all know the building which most recently houses Denise's Country Cafe is scheduled for demolition in coming weeks or months. That building originally was built as The Pennsylvania Hotel in the 1880s and was a centerpiece of downtown's supposedly infamous "South Side" through the 1940s.

That's only relevant in that the razing of Denise's will be just the latest in the gradual but now accelerating crumbling of Garnett's historic downtown.

The survival of those century-old buildings has been an issue for nearly 30 years as their decay has become more and more apparent along with their lack of economic viability. As we look at Garnett's downtown, we see some service industries like law offices, banking, insurance, financial investing and others still holding on to viability and making credible use of those downtown buildings. Retail doesn't seem to work there anymore and we have failed to find enough businesses in those other categories to sustain many of those structures, so we need to search out those possibilities and expand the possible categories that can work downtown.

One area of possible expansion is to repeal the city's prohibition against residential housing on the first floor of those commercial structures, making them options for sale or rental by residents who would make homes out of them or for developers who would invest in them for that reason.

I spoke with Herb Waring years ago regarding this issue and he conveyed to me that the zoning board at the time held the belief that the first floors of those buildings should be protected for retail development. I saw the logic at the time, but that was 10 years ago and the situation with Garnett's downtown has only gotten worse. Vacant buildings remain vacant – many of them for decades. Clearly, banking on retail development isn't getting us anywhere in preserving those structures.

Since this would amount to a simple repeal of a regulation there would be no costs to the city, and the developer/investor would be able to take advantage of the Neighborhood Revitalization Program to temporarily offset any increase in property taxes coming from a restoration or renovation.

As long as those buildings are viable they remain an asset for our city; but when they decay beyond saving that asset is lost and won't be replaced. I believe the situation is dire enough to repeal this regulation and allow the utmost flexibility in redeveloping those buildings with hopes of preserving them and making them economically productive for our residents and our community.



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M E M O

TO: GARY GICZEWSKI
FROM: TERRY J. SOLANDER, CITY ATTORNEY
SUBJECT: DANE HICKS' REQUEST

Dane sees this as simply a repeal of Ordinance 4003. That will not address his problem as it would leave the rest of the zones intact, prohibiting any single or two family residence or use on any floor in any district other than residential, agricultural and OI districts.

What the Planning Commission should do in evaluating Mr. Hicks' proposal is to determine whether or not as a general policy the City wants to adopt unrestricted use of the B-1, B-2 and possibly I-1 districts for residential use. I understand the logic behind the request and frankly believe that it has some merit. On the other hand, I'm not certain that it will completely solve the problem of revitalizing the downtown and other business areas.

However, these are matters peculiarly and particularly suited to discussion by the Planning Commission and if they make a determination that some or all residential use should be freely allowed in these districts, I will be glad to draft an appropriate ordinance for that purpose.

Dated August 14, 2017.